

Name: Nicholas Lear #141815

Address: Utah State Prison

Telephone: P.O. Box 250

Draper, Utah 84020

RECEIVED CLERK

FEB 04 2013

U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

Central DIVISION

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

FEB 12 2013

BY D. MARK JONES, CLERK  
CIVIL RIGHTS COMPLAINT  
DEPUTY CLERK  
(42 U.S.C §1983, §1985)

Nicholas Joseph Lear

(Full Name)

PLAINTIFF

vs.

Warden Bigelow

Dr. Garden

Dr. Tubbs

DEFENDANTS

Case: 2:13cv00096  
Assigned To : Waddoups, Clark  
Assign. Date : 2/4/2013  
Description: Lear v. Bigelow et al

A. JURISDICTION

1. Jurisdiction is proper in this court according to:

- a.  42 U.S.C. §1983
- b.  42 U.S.C. §1985
- c.  Other (Please Specify) \_\_\_\_\_

2. NAME OF PLAINTIFF Nicholas Lear #141815  
IS A CITIZEN OF THE STATE OF Utah

PRESENT MAILING ADDRESS:

Utah State Prison

Po Box 250

Draper, Utah 84020

3. NAME OF FIRST DEFENDANT Alford Bigelow  
IS A CITIZEN OF Maybe Salt Lake City, Utah  
(City and State)

IS EMPLOYED AS Warden Bigelow at Utah State Prison

(Position and Title if Any) (Organization)

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES  NO  If your answer is "YES" briefly explain.

He is the Warden at the Utah State Prison.

4. NAME OF SECOND DEFENDANT Dr. Garden  
(If applicable)

IS A CITIZEN OF ? Utah  
(City and State)

IS EMPLOYED AS Doctor at Utah State Prison

(Position and Title if Any) (Organization)

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES  NO  If your answer is "YES" briefly explain.

He is the main Doctor at Utah State Prison..  
He has oversight of the Dr. Tubbs, and approved  
of Dr Tubbs' deliberate indifference by not  
requiring Dr. Tubbs to give adequate medical care

5. NAME OF THIRD DEFENDANT Dr. Tubbs  
(If applicable)

IS A CITIZEN OF ? Utah  
(City and State)

IS EMPLOYED AS Doctor at Utah State Prison

(Position and Title if Any) (Organization)

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES  NO  If your answer is "YES" briefly explain.

He is a Doctor at the Utah State Prison.  
He acted with deliberate indifference by refusing to exam me, order any treatments, or give me anything for the pain, even though I couldn't walk

6. NAME OF FOURTH DEFENDANT 3 John Does incase I got (If applicable) the spelling wrong on the other defendants, or  
IS A CITIZEN OF the Warden WAS different.  
(city and State)

IS EMPLOYED AS \_\_\_\_\_ at \_\_\_\_\_.  
(Position and Title if Any) (Organization)

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES  NO  If your answer is "YES" briefly explain.

They all work for the Utah State Prison.

(Use additional sheets of paper if necessary.)

#### B. NATURE OF CASE

1. Why are you bringing this case to court? Please explain the circumstances that led to the problem.

Medical refused to treat my injured hip.  
They did nothing until 18-24 months after the injury, when they started treating me they found a dime size spot that the University Doctor thought was Avascular Necrosis.

C. CAUSE OF ACTION

1. I allege that my constitutional rights, privileges or immunities have been violated and that the following facts form the basis for my allegations: (If necessary you may attach additional pages)

- a. (1) Count I: Cruel and Unusual Punishment  
I do not have exact dates because Medical has failed to give me all the records I requested through GRAMA. see attachment 1  
(2) Supporting Facts: (Describe exactly what each defendant did or did not do. State the facts clearly in your own words without citing legal authority or arguments.)

After I injured my hip, I seen Dr. Tubbs. He didn't do any examination. He didn't order any type of x-ray or treatment. He didn't order anything for my pain. Even though I was unable to walk, he refused to give me a crutch saying "you found a way up here, you can find a way back."

Dr. Tubbs refused to give any treatment at all; however, he banned me from the gym for 30 days. See Attachment 2

- b. (1) Count II: Cruel and Unusual Punishment

- (2) Supporting Facts: After about 3 weeks of extreme pain, I again seen Dr Tubbs for my hip injury.

He refused to give me any treatment; no exam, no pain medication, no crutch, even though I again requested something for the pain and something for a crutch.

He made the gym ban indefinite, "until you tell me your better," he said. See attachment 2

- c. (1) Count III: Cruel and Unusual Punishment

(2) Supporting Facts: I had begged a crutch from a med tech. I seen Dr Tubbs and told him my hip was better; to get my gym job back. I told him I still needed the crutch though, but he refused to let me use the one I had. He took the crutch from me, but he did lift the gym bar see attachment 2

D. INJURY

1. How have you been injured by the actions of the defendant(s)?

I had to endure around 18-months of extreme pain, walking with great difficulties.

Because my injury wasn't treated for around 18-months. My injury has progressed. I will eventually need hip replacement.

What was probably an impingement of blood flow, has been left untreated. Now I have a dime size spot, that was diagnosed as Avascular Necrosis. See attachment 3

1. Have you filed other lawsuits in state or federal court that deal with the same facts that are involved in this action or otherwise relate to the conditions of your imprisonment?

YES        / NO X. If your answer is "YES," describe each lawsuit. (If there is more than one lawsuit, describe additional lawsuits on additional separate pages, using the same outline.)

- a. Parties to previous lawsuit:

Plaintiff(s): \_\_\_\_\_

Defendant(s): \_\_\_\_\_

- b. Name of court and case or docket number: \_\_\_\_\_

c. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_

d. Issues raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e. When did you file the lawsuit? \_\_\_\_\_  
Date      Month      Year

f. When was it (will it be) decided? \_\_\_\_\_

2. Have you previously sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part C? YES \_\_\_\_ / NO \_\_\_\_\_. If your answer is "YES" briefly describe how relief was sought and the results. If your answer is "NO" explain why administrative relief was not sought.

\_\_\_\_\_  
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\_\_\_\_\_

**F. REQUEST FOR RELIEF**

1. I believe that I am entitled to the following relief:

\$300,000.00 for the 18 months of pain and suffering,  
and to cover the future cost of my hip, after prison  
A hip resurfacing surgery.

If necessary at this time, hip replacement.

\$1,000,000.00 punitive damages, or damages set  
by a jury for punitive damages, which ever is  
greater

Access to all my medical notes, a paperwork, and a  
transcript of all Tele med communication regarding me. cont.

1. Attorney fees and filing fees.

An exam of my hip by a doctor that I want independent of the state system - to show the avascular necrosis could have been avoided.

**DECLARATION UNDER PENALTY OF PERJURY**

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint, and that the information contained therein is true and correct. 28 U.S.C. §1746; 18 U.S.C. §1621.

Executed at Utah State Prison 1/26 2012  
(Location) (Date)

Nicholas Lee #141815  
Signature